



This document is scheduled to be published in the Federal Register on 03/07/2016 and available online at <http://federalregister.gov/a/2016-04971>, and on FDsys.gov

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Docket No. NHTSA-2015-0125

Columbia Body Manufacturing Co.; Grant of Petition for Temporary Exemption from FMVSS No. 224

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of grant of petition for temporary exemption from FMVSS No. 224, Rear Impact Protection.

SUMMARY: In accordance with 49 U.S.C. 30113 and 49 CFR Part 555, NHTSA is granting a petition from Columbia Body Manufacturing Co. (“Columbia Body” or “petitioner”), a small volume manufacturer, for a temporary exemption from Federal Motor Vehicle Safety Standard (FMVSS) No. 224, Rear impact protection, for certain gravity feed dump body trailers (“dump body trailers”). This exemption is based on the agency’s determination that compliance with FMVSS No. 224 would cause substantial economic hardship to a manufacturer that has tried to comply in good faith with the standard, and that such an exemption is consistent with the public interest. Columbia Body must affix certification labels to the exempted trailers stating they have been exempted from FMVSS No. 224.

DATES: The subject vehicles manufactured by Columbia Body are exempted from FMVSS No. 224, Rear Impact Protection until [INSERT DATE THREE YEARS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For legal questions, contact Mr. Ryan Hagen, Office of the Chief Counsel, NCC-200, National Highway Traffic Safety Administration,

1200 New Jersey Avenue, SE, West Building 4th Floor, Washington, D.C. 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820. For technical questions, contact Mr. Robert Mazurowski, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building 4th Floor, Washington, D.C. 20590. Telephone: (202) 366-1012; Fax: (202) 493-2990.

SUPPLEMENTARY INFORMATION:

In accordance with 49 U.S.C. 30113 and 49 CFR Part 555, NHTSA is granting a petition from Columbia Body, a small volume manufacturer, for a temporary exemption from FMVSS No. 224, Rear impact protection, for dump body trailers. The agency is granting this petition because compliance with the standard would cause substantial economic hardship to a small volume manufacturer that has tried to comply with the standard in good faith. NHTSA believes Columbia Body has put forth a good faith effort to research and explore potential options to comply with FMVSS No. 224. As discussed below, NHTSA also believes that, because dump body trailers help build and maintain public infrastructure, and because the safety implications of this grant are minimal, granting this exemption is consistent with the public interest and the National Traffic and Motor Vehicle Safety Act. Additionally, NHTSA received no public comments on this petition.

The petitioner's exemption will be limited to 210 dump body trailers over the next three years. Columbia Body must include language on the certification labels it affixes to the exempted dump body trailers it manufactures notifying the public that the vehicle has been exempted from FMVSS No. 224.

A. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary of Transportation has delegated the authority for implementing this section to NHTSA.

In recognition of the more limited resources and capabilities of small manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts is provided in the Safety Act to enable the agency to give those manufacturers additional time to comply with motor vehicle safety standards. The Safety Act authorizes the Secretary to grant a temporary exemption to a manufacturer whose total motor vehicle production in the most recent year of production is not more than 10,000 motor vehicles, on such terms as the Secretary deems appropriate, if the exemption would be consistent with the public interest and the Safety Act and “compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.” (49 U.S.C § 30113(b)(3)(B)(i)).

NHTSA established 49 CFR Part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards, to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of the Safety Act (49 U.S.C. Chapter 301).¹ A manufacturer is eligible to apply for a

¹ While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a “temporary basis,” (49 U.S.C. 30113(b)(1)) the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency’s decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an

hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

B. Rear Impact Protection

FMVSS No. 224, Rear impact protection,² requires that all trailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds (lb)) or more be fitted with a rear impact guard that conforms to FMVSS No. 223, Rear impact guards.³ This requirement, however, has presented problems for certain specialized vehicles, such as road construction vehicles where interaction between the rear impact guard and the specialized paving or dumping equipment can cause engineering challenges. In 2004, NHTSA finalized a rule that excludes road construction controlled horizontal discharge semitrailers (RCC horizontal discharge trailers), which discharge asphalt to a paving machine by use of a mechanical drive and conveyor belt.⁴ In that final rule, NHTSA concluded that the installation of rear impact guards would interfere with the intended function of the trailers and were impractical, given the design and mission of these trailers.

The 2004 final rule decided against a regulatory exemption for gravity feed dump trailers, which do not have the mechanical drive and conveyor belt as discussed above, because gravity feed dump trailers can be versatile vehicles used for a wide variety of tasks. NHTSA was concerned that creating an exemption in the regulation itself for gravity feed dump trailers could potentially permit a large vehicle population with greater exposure than RCC horizontal discharge trailers to be exempted from the standard. Instead, NHTSA anticipated dealing with

exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

² 49 CFR 571.224.

³ 49 CFR 571.223.

⁴ 69 FR 67663 (November 19, 2004). Available at: <https://www.federalregister.gov/articles/2004/11/19/04-25703/federal-motor-vehicle-safety-standards-rear-impact-guards-final-rule> (last accessed on November 5, 2015).

gravity feed dump trailers through the exemption process.⁵ Prior to that final rule, NHTSA had granted an exemption to gravity feed dump trailers manufactured by Columbia Body.⁶ Since that final rule, NHTSA has continued to grant exemptions to manufacturers of gravity feed dump trailer manufacturers through the procedures in 49 CFR Part 555.⁷

C. Overview of Columbia Body's Petition

Consistent with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Columbia Body of Clackamas, Oregon, a small volume trailer manufacturer, petitioned the agency for a three year temporary exemption from the rear impact protection requirements in FMVSS No. 224 based on substantial economic hardship.

Columbia Body is a small manufacturer that currently employs 40 full time employees and has annual sales of \$5-6 million. It produces two, three, and four axle “dump style” trailers that use a hydraulic hoist to raise the front end of the trailer and discharge its load through the tailgate. Columbia Body has produced an average of 17 trailers that do not require an exemption per year over the last three years.

Columbia Body states that recently, many of its gravity feed dump body competitors have gone bankrupt, leading purchasers to request the trailers from Columbia Body. Given the recent requests, Columbia Body seeks to ensure it is able to fill any potential orders. If the exemption were granted, Columbia Body projects that it would sell no more than 70 of the exempted trailers per year. Columbia Body states that the trailers in question are designed

⁵ *Id.* at 67666.

⁶ 68 FR 7406 (February 13, 2003). Available at: <http://www.regulations.gov/contentStreamer?documentId=NHTSA-2002-13955-0004&disposition=attachment&contentType=pdf> (last accessed on November 6, 2015).

⁷ See: 69 FR 30989 (June 1, 2004), available at: <https://www.federalregister.gov/articles/2004/06/01/04-12334/reliance-trailer-co-llc-grant-of-application-for-renewal-of-temporary-exemption-from-federal-motor> (last accessed on November 6, 2015), and 74 FR 42142 (August 20, 2009), available at: <https://www.federalregister.gov/articles/2009/08/20/E9-19956/beall-corporation-grant-of-application-for-a-temporary-exemption-from-fmvss-no-224> (last accessed on November 9, 2015).

specifically for use with paving machines. Without an exemption, Columbia Body states it will suffer substantial economic hardship, projecting it will have to lay off seven or eight of its 40 employees starting in 2016.

In its application, Columbia Body provides specific financial information from the last three years. In 2012, Columbia Body posted a net loss of \$108,000, followed by a \$215,000 loss in 2013. In 2014, it posted a net profit of \$302,000. If an exemption is not granted, Columbia Body projects it will post a \$169,000 net profit for 2016, in comparison to \$1 million net profit if an exemption is granted.

Columbia Body states that it has put forth a good faith effort to comply with FMVSS No. 224, however, is not possible for the company to produce a trailer at a reasonable price and with the utility its customers require for paving. Specifically, the rear end of the type of trailer in question interfaces with the front end of an asphalt paving machine, dumping hot asphalt into the paving machine's receiver. To establish this connection, the paving machine hooks to the rear wheels of the dump trailer. In order to prevent asphalt from spilling out while being transferred from the dump trailer to the paving machine, the paving machine fits 16 to 18 inches beneath the bottom of the dump trailer. The interaction between the dump trailer and paving machine occurs in the space where an underride guard would otherwise reside.

Columbia Body states that it has looked into possible solutions to this problem, including \$50,000 in research in 2005 and 2006 to evaluate solutions to comply with FMVSS No. 224. One solution included adding removable underride guards. Columbia Body states, however, that "[e]ven if we could install a removable underride guard it will put equipment operators in an unsafe situation installing and removing the guard." The petitioner states that the area where a removable underride guard would be installed is often covered in asphalt

buildup. Additionally, Columbia Body believes that the cleaning, maintenance, and heavy impacts on the underride guard and the area immediately around it when contacting the paving machine would affect the structural integrity of the underride guard.

Another solution Columbia Body states it looked into involved constructing a sub-frame “with the ability to slide the dump body forward when in transit and slide it to the rear to provide the proper over hang [sic] when paving.” Columbia Body states that although this design is possible, conversations with prospective customers indicate the design “would not be acceptable” because of the added cost and weight associated with building such a structure.

Columbia Body states that so long as the paving industry continues to use the same method of paving roads, it remains a physical impossibility to manufacture this type of trailer and comply with FMVSS No. 224.

In support of its petition for exemption, Columbia Body notes that gravity feed dump trailers have limited highway exposure due to their function. Specifically, the trailers themselves are on the road for short periods of time. “Asphalt batch plants are typically set close to the paving activity to limit time traveling between the two paving activities.” Additionally, the petitioner states that in many instances, these paving machines are often performing their transport tasks away from the driving public in restricted access construction areas.

Finally, Columbia Body believes its ability to obtain an exemption is in the public interest. Columbia Body has informed NHTSA that customers requesting its gravity feed dump trailers are doing so in order to pave local roadways. Many purchasers are local municipalities, or companies that support local municipalities in creating and maintaining roads for the

traveling public. Therefore, the petitioner believes supplying gravity feed dump trailers is in the public interest.

D. Notice of Receipt and Summary of Comments

On December 17, 2015, NHTSA sought comment on Columbia Body's petition by publishing a notice of receipt in the Federal Register.⁸ NHTSA received no comments on the petition.

E. Final Decision

Columbia Body petitioned NHTSA for a temporary exemption from FMVSS No. 224 under 49 U.S.C. 30113(b)(3), and in accordance with NHTSA's regulations at 49 CFR 555.6. NHTSA may grant such a petition if it finds that compliance with the standard would cause substantial economic hardship to a small volume manufacturer⁹ that has tried to comply with the standard in good faith, and that granting such an exemption is consistent with the public interest. NHTSA believes these exemption criteria are satisfied.

First, based on the detailed financial documentation Columbia Body has provided the agency, NHTSA believes Columbia Body would suffer substantial economic hardship without an exemption for its dump body trailers. Columbia Body posted a cumulative net loss over the last three years. Looking forward, Columbia Body would have to lay off seven to eight of its 40 employees in 2016.

Second, Columbia Body has demonstrated that it has made good faith efforts to comply with FMVSS No. 224. The dump body trailers subject to this petition are designed to attach to a paving machine that secures to the rear end of the dump body trailer. When attached to the

⁸ See: 80 FR 78817 (December 17, 2015), available at: <https://www.federalregister.gov/articles/2015/12/17/2015-31709/columbia-body-manufacturing-co-receipt-of-petition-for-temporary-exemption-from-fmvss-no-224> (last accessed on January 2016).

⁹ "A manufacturer is eligible for an exemption . . . only if the Secretary determines that the manufacturer's total motor vehicle production in the most recent year of production is not more than 10,000." 49 U.S.C. 30113(d).

dump body trailer, the paving machine hooks to the rear wheels of the trailer and tucks underneath the rear end of the dump body trailer. This interaction between the dump body trailer and a paving machine thwarts the installation of an underride guard. Despite the known design challenges, Columbia Body invested a significant amount of time and money investigating a way to comply with FMVSS No. 224 while maintaining the dump body trailer's paving utility. It developed potential solutions to the compliance challenges, and invested in a finite element analysis of the situation. Further, Columbia Body discussed the resulting potentially compliant design with prospective paving customers, who responded that an increase in cost and loss of payload capability were not acceptable for their business needs. From its research, Columbia Body reasonably concluded that it could not produce its dump body trailers with compliant guards unless paving machines are modified to no longer hook to the rear wheels of the dump body trailer. Such redesign of paving machines was not practical.

In the 2004 final rule amending FMVSS No. 224, NHTSA stated that “[i]n certain limited circumstances, the agency [will grant] temporary exemption to gravity feed dump trailer manufacturers based, in part, on impracticability of compliance.”¹⁰ We have closely evaluated the petition and conclude that practicability problems posed by Columbia Body's dump body trailers support a grant of the petition.

Third, NHTSA believes it is consistent with the public interest to grant Columbia Body this exemption. The overhang required by these trailers, while not exclusive to paving applications, is specifically manufactured to attach to a paving machine. These trailers serve as a tool for paving asphalt surfaces, most commonly, public roads; they are needed for that public function. Given the few remaining companies that produce dump trailers for paving, we believe

¹⁰ 69 FR 67663 (November 19, 2004). Available at: <https://www.federalregister.gov/articles/2004/11/19/04-25703/federal-motor-vehicle-safety-standards-rear-impact-guards-final-rule> (last accessed on January 7, 2016).

that the exemption would result in more dump trailers being available for paving and other purposes, which would facilitate construction projects. Further, because these trailers are used primarily in road construction applications, their exposure to the traveling public is reduced. In many instances, these trailers are traveling in restricted area construction zones or with a paving machine attached to the rear end.

Moreover, the impact on safety by this exemption is further limited by the fact that relatively few vehicles would be affected. The number of exempted trailers allowed under this exemption is tailored to Columbia Body's projected production over the next three years, meaning that a maximum of only 210 trailers in total will be exempted.

NHTSA also considered the impacts of not granting the exemption. Columbia Body states that the failure to receive an exemption could cause it to lay off seven to eight of its 40 employees starting in 2016. Given the practicability problems the petitioner faces in meeting FMVSS No. 224 and the efforts made to comply, the negligible safety impacts of an exemption, and the increased availability of dump trailers as a result of an exemption, we do not believe that the potential job losses would be warranted. Taking all of these things into consideration, NHTSA believes this exemption is in the public interest.

Based on the exemption requirements and the information before the agency, NHTSA is issuing a temporary exemption to Columbia Body from FMVSS No. 224 for a period of three years for the dump body trailers it manufactures for paving applications.¹¹ This exemption is limited to 210 trailers during the temporary exemption period. Further, dump body trailers that are exempted from FMVSS No. 224 must display certification labels noting this exemption as required by 49 CFR 555.9(c).

¹¹ As noted previously in this notice, the gravity dump body trailers Columbia Body seeks an exemption for require 16 to 18 inches of clearance rearward of the rear wheels.

Columbia Body is granted NHTSA Temporary Exemption No. EX 16-01, from FMVSS No. 224.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95.

Issued on: February 29, 2016

Mark R. Rosekind
Administrator

Billing Code 4910-59-P

[FR Doc. 2016-04971 Filed: 3/4/2016 8:45 am; Publication Date: 3/7/2016]